

REMARKS/ARGUMENTS

Reconsideration is respectfully requested of the Office Action of October 2, 2007, relating to the above-identified application.

A one month extension of time and associated fee is filed herewith.

The claims in the case are: Claims 1, 2, 4, 6, and 8 to 14.

Claims 1, 2 and 4 have been amended to more precisely define subject matter of the invention. Basis is found in the published application at paragraphs [0018]-[0013] and [0049]-[0054].

No new matter is presented.

Claim 6 has been corrected.

The rejection of Claim 3 is now moot.

The rejection of Claim 1 under 35 U.S.C. 102(b) as anticipated by *Hartmann* (US 5,959,005) is traversed and reconsideration is respectfully requested. *Hartmann*, assigned to the same assignee as the present application, describes a method to produce a surface modified, hydrophobic silanized, silica powder with specifically defined physico-chemical properties as shown in claim 1 (Col 2, lines 38-60), whereby the pyrogenically produced silica is surface modified with HMDS (Hexamethyldisilazane). The surface-modified silica of *Hartmann* also can be structure-modified (destructured).

Hartmann shows that the modification of the structure can be done by means of a vertical ball mill, see col. 2, line 19. The resulting product can be ground by an air jet mill in order to destroy the grit in the powder (see the example in col. 2, line 15-36).

The surface modified and destructured silica according to the US, 5,959,005 (*Hartmann*) is used as a filler in polymers like 2K-RTV silicone rubber (see the example in col. 2).

According to column 1, line 54 the silica can be used as a free-flow agent.

The reference *Hartmann* (US 5,959,005) uses HMDS (Hexamethyldisilazane) only and it is to be noted that in HMDS the alkyl group contains only one C-atom.

According to the invention, the silane I (hexadecyltrimethoxysilane) and silane II (octyltrimethoxysilane) are particularly preferred (see page 7 the example according to Table 5).

In the application, silicas produced in accordance with the present invention are shown in Table 7 and their properties are shown in Table 8. The silicas listed in Table 7 have been surface treated with the dimethylsilylgroup, a preferred member of the treating agents, and structure modified (silicas 1 to 11).

Attention is invited to the tests shown in Tables 13, 14, 15 and 16. Table 13 compares a prior known silica AEROSIL R974 (produced by assignee) with examples 1-3 of the invention and the results demonstrate that the silicas of the invention exhibit unexpectedly improved fluidisability of the fire extinguishing powder with which they was mixed.

The AEROSIL R974 has a BET-surface of 200 m²/g which is surface modified with DDS (Di methyl dichlorosilane).

The tests reported in Tables 14-16 shows the result that there is markedly reduced tendency to caking compared with the prior art when fire extinguishing powders are provided

with the structure-modified silicas defined by applicants' claims herein; see page 33, last paragraph of the specification.

Additional test data demonstrating the unexpectedly better results obtained by using the silicas described in the present application is presented in example 2 (see page 34 to 37) which shows tests relating to pharmaceutical excipient mixtures.

The data in col.9 in Table 17 shows that the silicas according to the examples of the invention have a markedly smaller sieve residue and hence agglomerate content than the comparison products AEROSIL 200, AEROSIL R972 and AEROSIL R8200. The latter three are all prior known silicas produced by the assignee.

It is to be particularly noted that AEROSIL R8200 is the silica according to *Hartmann* (US 5,959,005).

Applicants respectfully submit that *Hartmann* does not anticipate the subject matter of Claim 1.

For the same reasons, applicants submit that *Hartmann* does not anticipate Claim 2 and, therefore, request reconsideration of the rejection of Claim 2 under 35 U.S.C. § 102(b).

Withdrawal of both of these rejections is respectfully requested.

The rejection of Claims 4, 6, 11 and 12 under 35 U.S.C. § 102(b) is traversed and reconsideration is respectfully requested. In view of the foregoing amendments to the claims, it is believed that *Hartmann* is no longer available as an anticipatory reference and therefore the rejection should be withdrawn. *Hartmann* shows only the use of HMDS which is now

excluded by the claims. Therefore, applicants respectfully request that this rejection also be withdrawn.

The rejection of Claims 8 and 9 under 35 U.S.C. § 103(a) in view of *Hartmann* taken with *Menon* (US 6,159,540) is traversed and reconsideration is respectfully requested.

Hartmann has already been discussed above and the remarks made there apply here as well.

The *Menon* patent is directed to extracting organosilicon impurities from a crude silica product but does not contain any teaching that the silicas of *Hartmann* could be improved by treating with the silanes defined by the present claims. There is simply no case of *prima facie* obviousness established by the combination of references and therefore the rejection should be withdrawn.

The rejection of Claim 10 under 35 U.S.C. 103 (a) is traversed and reconsideration is respectfully requested. *Hartmann* has already been discussed and the remarks made above apply here as well.

Koehlert relied on to show powdery materials is noted. However, there is no suggestion in the references that powdery materials defined in Claim 10 could be improved. Therefore, the rejection fails to establish *prima facie* obviousness and the rejection should be withdrawn.

All of the foregoing remarks apply to new Claims 13 and 14 as well and favorable action is respectfully requested at the earliest convenience of the Examiner.

Examination on the merits is awaited.

Respectfully submitted,

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